

Notice to the Bar:

Chief Justice Barbara J. Rouse of the Superior Court invites comments on Proposed Superior Court Standing Order on Written Discovery. Comments should be directed to the Superior Court Administrative Office, c/o Maria I. Peña, Suffolk County Courthouse, Three Pemberton Square, 13th Floor, Boston, MA 02108 on or before **August 15, 2008**. Comments may also be emailed to maria.pena@jud.state.ma.us.

PROPOSED SUPERIOR COURT STANDING ORDER **ON WRITTEN DISCOVERY**

1. Uniform definitions in discovery requests

(a) **Incorporation by Reference and Limitations.** The full text of the definitions set forth in paragraph (c) is deemed incorporated by reference into all discovery requests, but shall not preclude (i) the definition of other terms specific to the particular litigation; (ii) the use of abbreviations; or (iii) a narrower definition of a term defined in paragraph (c).

(b) **Effect on Scope of Discovery.** This rule is not intended to broaden or narrow the scope of discovery permitted by the Massachusetts Rules of Civil Procedure.

(c) **Definitions.** The following definitions apply to all discovery requests, unless otherwise ordered by the court:

(1) *Communication.* The term “communication” means the transmittal of information (in the form of facts, opinions, ideas, inquiries, or otherwise).

(2) *Document.* The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in *Mass. R. Civ. P. 34(a)*. An earlier draft is a separate document within the meaning of this term.

(3) *Identify (With Respect to Persons).* When referring to a natural person, to “identify” means to give, to the extent known, the person’s (a) full name, (b) present or last known address, and (c) the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) *Identify (With Respect to Entities).* When referring to an entity, to “identify” means to give, to the extent known, (a) the entity’s full name, including the nature of the entity, e.g. corporation, limited liability corporation, partnership, or professional corporation, (b) present or last known address of its headquarters or principal place of business, and (c) the state in which the entity is incorporated or otherwise created. Once an entity has been identified in accordance with this subparagraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

(5) *Identify (With Respect to Documents)*. When referring to documents, to “identify” means to give, to the extent known: (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the author or authors, according to the document; and (e) the persons to whom, according to the document, the document (or a copy) was to have been sent.

(6) *Parties*. The term “plaintiff” or “defendant,” as well as a party’s full or abbreviated name or a pronoun referring to a party, mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, and subsidiaries. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(7) *Person*. The term “person” means any natural person or any business, legal, or governmental entity.

(8) *Concerning*. The term “concerning” means referring to, describing, offering evidence of, or constituting.

(9) *State the Basis*. When an interrogatory calls upon a party to “state the basis” of or for a particular claim, allegation, or defense, the party shall provide a substantial summary of the factual basis supporting the claim, allegation, or defense at the time the interrogatory is answered. The summary shall: (a) identify the essential acts or failures to act forming the substance of the claim, allegation, or defense, (b) identify the persons and entities that, through firsthand information or possession of documents, are the sources of the party’s information regarding the claim, allegation, or defense, and (c) when one or more documents is the basis of the claim, allegation, or defense, such as a written contract in a contractual claim or defense, or a written misrepresentation in a misrepresentation claim, identify (or provide as part of the interrogatory answer a copy of) each such document. In stating the basis, a party may not withhold information from the interrogatory answer because it derives from attorney work product or was obtained in anticipation of litigation if the party intends to offer this information at trial. Apart from the duty to supplement in Mass. R. Civ. P. 26(e), the party answering a “state the basis” interrogatory has a duty promptly to supplement the interrogatory answer whenever the party learns that factual information in the answer is false or misleading, even if the information was true when the answer was given.

2. **Objections to Interrogatories**

General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party, after having asserted an objection, refuses to answer an interrogatory, the party shall so state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either: (a) notwithstanding the objection no information has been withheld from the answer, or (b) information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the

nature of the information withheld and identify each objection asserted to justify the withholding.

3. **Objections to Requests for the Production of Documents and Things**

(a) Where a party serves a response to a request for production of documents and things under Mass. R. Civ. P. 34 before production is completed, the response may include general objections. However, where general objections are made, the responding party shall prepare and serve a supplemental response no later than 10 days after the completion of production.

(b) Once production is completed, general objections to requests for production of documents and things are prohibited. As to each request, the supplemental response shall state either: (i) notwithstanding prior general objections, all responsive documents or things in the possession, custody, or control of the responding party have been produced; (ii) after diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or (iii) the specific objection made to the request. When specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding party that have not been produced because of the objection. Where a privilege log is required by Mass. R. Civ. P. 26(b)(5) or court order, the log shall be served with the supplemental response, unless the requesting party waives entitlement to the log or agrees to a later date for service.

(c) In the initial written response, the responding party shall articulate with clarity the scope of the search conducted or to be conducted. If the scope of the search changes during production, the responding party in the supplemental written response shall articulate with clarity the change in scope. If the scope of the search does not include all locations, including electronic storage locations, where responsive documents or things reasonably might be found, the responding party shall explain why these locations have been excluded from the scope of the search.